

School Food Authority's free and reduced price policy statement has been approved by the State agency, or FCSRO where applicable. Once the School Food Authority's free and reduced price policy statement has been approved, reimbursement may be allowed, at the discretion of the State agency, or FCSRO where applicable, for eligible meals and milk served during the period of suspension.

(d) If any free and reduced price policy statement submitted for approval by any School Food Authority to the State agency, or FCSRO where applicable, is determined to be not in compliance with the provisions of this part, the School Food Authority shall submit a policy statement that does meet the provisions within 30 days after notification by the State agency, or FCSRO where applicable.

(e) When revision of a School Food Authority's approved free and reduced price policy statement is necessitated because of a change in the family-size income standards of the State agency, or FCSRO where applicable, or because of other program changes, the School Food Authority shall have 60 days from the date the State agency announces the change in which to have its revised policy statement approved by the State agency, or FCSRO where applicable. In the event that a School Food Authority's proposed revised free and reduced price policy statement has not been submitted to, and approved by, the State agency, or FCSRO where applicable, within 60 days following the public announcement by the State agency, reimbursement shall be suspended for any meals or milk served after the end of the 60-day period. No commodities donated by the Department shall be used in any school after the end of the 60-day period, until such time as the School Food Authority's free and reduced price policy statement has been approved by the State agency, or FCSRO where applicable. Reimbursement may be allowed at the discretion of the State agency, or FCSRO where applicable, for eligible meals and milk served during the period of suspension once the School Food Authority's free and reduced price policy statement has been approved by the State agency, or FCSRO where applica-

ble. Pending approval of a revision of a policy statement, the existing statement shall remain in effect.

(Sec. 8, Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1758); sec. 5, Pub. L. 95-627, 92 Stat. 3619 (42 U.S.C. 1772); 44 U.S.C. 3506; sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14958, June 7, 1973; Amdt. 6, 39 FR 30339, Aug. 22, 1974; Amdt. 8, 40 FR 57208, Dec. 8, 1975; Admt. 13, 44 FR 33049, June 8, 1979; 47 FR 746, Jan. 7, 1982; 48 FR 12511, Mar. 25, 1983]

#### **§245.11 Action by State agencies and FCSROs.**

(a) Each State agency, or FCSRO where applicable, shall, for schools under its jurisdiction:

(1) Issue an annual prototype free and reduced price policy statement and any other instructions necessary to assure that School Food Authorities are fully informed of the provisions of this part. If the State elects to establish for all schools a maximum price for reduced price lunches that is less than 40 cents, the State shall establish such price in its prototype policy. Such State shall then receive the adjusted national average factor provided for in §210.4(b); (2) prescribe and publicly announce by July 1 of each fiscal year, in accordance with §245.3(a), family-size income standards. Any standards prescribed by FCSRO with respect to nonprofit private schools shall be developed by FCSRO after consultation with the State agency.

(a-1) When a revision of the family-size income standards of the State agency, or FCSRO where applicable, is necessitated because of a change in the Secretary's income poverty guidelines or because of other program changes, the State agency shall publicly announce its revised family-size income standards no later than 30 days after the Secretary has announced such change.

(b) State agencies, and FCSRO where applicable, shall review the policy statements submitted by school-food authorities for compliance with the provisions of this part and inform the school-food authorities of any necessary changes or amendments required in any policy statement to bring such statement into compliance. They shall notify school-food authorities in

writing of approval of their policy statements and shall direct them to distribute promptly the public announcements required under the provisions of §245.5.

(c) Each State agency, or FCSRO where applicable, shall instruct School Food Authorities under their jurisdiction that they may not alter or amend the eligibility criteria set forth in an approved policy statement without advance approval of the State agency, or FCSRO where applicable.

(d) Not later than 10 days after the State agency, or FCSRO where applicable, announces its family-size income standards, it shall notify School Food Authorities in writing of any amendment to their free and reduced price policy statements necessary to bring the family-sized income criteria into conformance with the State agency's or FCSRO's family-size income standards.

(e) Except as provided in §245.10, the State agency, or FCSRO where applicable, shall neither disburse any funds, nor authorize the distribution of commodities donated by the Department to any school unless the school food authority has an approved free and reduced price policy statement on file with the State Agency, or FCSRO where applicable.

(f) Each State agency, or FCSRO where applicable, shall, in the course of its supervisory assistance, review and evaluate the performance of School Food Authorities and of schools in fulfilling the requirements of this part, and shall advise School Food Authorities of any deficiencies found and any corrective action required to be taken.

(Secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1758, 1759(a), 1773, 1778))

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14958, June 7, 1973; Amdt. 8, 40 FR 57208, Dec. 8, 1975; 44 FR 1364, Jan. 5, 1979; 46 FR 51368, Oct. 20, 1981; 48 FR 12511, Mar. 25, 1983; 52 FR 19276, May 22, 1987]

#### §245.12 Fraud penalties.

(a) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part, whether received directly or indirectly from the Department, shall—

(1) If such funds, assets, or property are of a value of \$100 or more, be fined not more than \$10,000 or imprisoned not more than five years of both; or

(2) If such funds, assets, or property are of a value of less than \$100, be fined not more than \$1,000 or imprisoned not more than one year or both.

(b) Whoever receives, conceals, or retains to his use or gain funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties provided in paragraph (a) of this section.

(Sec. 10(a), Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 14, Pub. L. 95-627, 92 Stat. 3625-3626)

[Amdt. 14, 44 FR 37901, June 29, 1979]

#### §245.13 Special responsibilities of State agencies.

(a) State agencies shall require School Food Authorities of schools selected for participation in the Department of Health, Education, and Welfare Public School Civil Rights Survey to gather information on the race and ethnic background of children for whom applications for free and reduced price meals are filed.

(b) To comply with the provisions of §245.13(a) of this part, State agencies at their discretion may permit such School Food Authorities the option of requesting parents on application forms to voluntarily identify the race or ethnic background of their child for whom application is being made. Parents' provision of this information is purely voluntary and failure to provide this information will not affect the eligibility for benefits of the child for whom application is made. School Food Authorities shall develop alternative means of providing racial and ethnic data for applicants when such information is not voluntarily provided by parents on the application.

(c) School Food Authorities for such survey schools which are granted the option by the State agency and wish to request that the parents voluntarily identify the race or ethnic background of their children on the application